

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)

I.T.A No.2347/Mum/2022 - A.Y. 2011-12
I.T.A No.2348/Mum/2022 - A.Y. 2014-15
I.T.A No.2349/Mum/2022 - A.Y. 2016-17
I.T.A No.2350/Mum/2022 - A.Y. 2017-18
I.T.A No.2351/Mum/2022 - A.Y. 2020-21

M/s Jal Ratan Deep Co-operative Housing Society Ltd, Plot No.13B Bangur Nagar, Link Road Goregaon (West), Mumbai-400 014 PAN : AACAJ3366M	vs	Income-tax Officer, Ward-13(2)(1) Mumbai DGIT (Vigilance)(West)
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Assessee represented by	None
Revenue represented by	Shri Rajendra Chandekar

Date of hearing	31/10/2022
Date of Pronouncement	01/11/2022

ORDER

Aforesaid inter-connected appeals bearing common questions of law and facts are taken up for disposal by way composite order in order to avoid the multiplicity of discussion.

2. The Appellant, M/s Jal Ratan Deep Co-operative Housing Society Ltd (hereinafter referred to as the 'assessee society') by filing the present appeals, sought to set aside the impugned orders dated 16/07/2022, 15/07/2022, 15/07/2022, 07/07/2022 & 07/07/2022,

passed by National Faceless Appeal Centre(NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment orders for Assessment Years 2011-12, 2014-15, 2016-17, 2017-18 & 2020-21, respectively on the identically worded grounds except difference in figure of deduction / disallowance (Grounds of appeal of A.Y 2011-12 are taken) interalia that :-

“1. Attracted Section - Section 250

Issue - Not granted the opportunity to counter the assertion taken by the CIT- APPEALS/NFAC for the first and only time during the entire History of the case.

On the facts and circumstances of the case CIT- APPEALS/NFAC stated in its order that

"As there is clear evidence in the 105th & 114th Annual Reports of M/s. Shamrao Vithal cooperative Bank limited , Mumbai, that it was no more a cooperative society, further as it has more than 105 branches in seven states and further as it has RBI licence w.e.f.24.08.1984, M/s. Shamrao Vithal Multi state scheduled cooperative Bank limited, is clearly a Bank and not a society."

The CIT- APPEALS/NFAC has neither granted any opportunity to counter the above theory which it has taken up in an arbitrate manner nor it heeded any of the judicial pronouncements by ITAT- Mumbai and various other High courts in similar issue duly submitted within the written submission.

2. Attracted Section-Section 250

Issue - Not granted the opportunity of being heard through virtual or personal mode despite same has been requested categorically in the written submission by the appellatant.

On the facts and the circumstances of the case the CIT- APPEALS/NFAC has not granted any opportunity to be heard in personal either through virtual mode or otherwise despite same was urged in the last paragraph of the written submission.

Not granting such an opportunity is violation of the Faceless Appeal Assessment Scheme and provisions thereof.

3. Attracted Section - Section 250

Issue - Order of the CIT- APPEALS/NFAC is not a speaking order

On the facts and the circumstances of the case CIT - APPEAL/NFAC has not passed a speaking order as it is well postulated from the order that not a single iota has been mentioned against the arguments, assertions, legal provisions and various case laws quoted in the written submission.

4. Attracted Section - Section 143(l)(a)

Issue - CPC Superseded the conferred Power under section 143(l)(a)

On the facts and the circumstances of the case the Central Processing Centre (CPC) of The Income Tax Department erred in disallowing the deduction claimed under section 80(P)(2)(d) of the chapter VI - A that is interest/dividend from investment in other co-operative societies. CPC has superseded the authority and power conferred to it under clause 'a' of subsection 1 of section 143 per say of the act to make adjustment for six categorized situations. Hence such an act of adjustment without any authority to make such an adjustment is not justifiable. Such a disallowance of deduction by CPC is simply abuse of authority and is an act of ultra vires to entrusted authority by law.

5. Attracted Section - Section 80(P)(2)(d)

Issue - CPC erred in Disallowing the deduction claimed under section

80(P)(2)(d) without giving any valid reason.

On the facts and in the circumstances of the case and in law, the CPC erred in disallowing claim of deduction of Rs. 17,57,654/- u/s 80P(2)(d) of the Income Tax Act, 1961 in respect of interest income earned on investment in Fixed Deposit with other Co-operative Bank namely SVC Co-operative Bank Ltd without mentioning any iota of reasons behind such a take. As no reason for disallowance has been given therefore the Intimation Order is not a speaking order and does not qualify the law of natural justice.

6. Attracted Section-Section 115JC

Issue - Addition made on account of disallowance of Section SOP deduction is void as the assessee qualifies all prerequisites to claim Section 80P(2)(d) deduction.

On the facts and in the circumstances of the case, as a matter of fact Rs. 17,57,654/- has been earned as Interest from the fixed deposits maintained by the assessee (which is a Co-operative society) with SVC Bank which is also a co-operative society, hence the assessee is eligible to claim the deduction under section 80P(2)(d) of the Income Tax Act, 1961. Despite of the fact that all conditions which are sine qua non for availing the deduction under section 80P(2)(d) has been complied with, yet disallowing the same by way of adjustment under an intimation order u/s 143(l) is bad in law.

7. Attracted Section-143(1)

Issue- Determination of Tax Liability is bad in law.

On the facts and in the circumstances of the case and in law Income tax of Rs. 5,45,267/- is wrong and contrary to the facts and circumstances of the case, provisions of the Act and the Rules made thereunder.

8. Attracted Section-Section 234B&234C

Issue - Levying Interest under section 234B & 234C is void ab initio.

On the facts and in the circumstances of the case and in law, the CPC erred in charging interest u/s 234B of Rs. 1,09,0407- AND u/s 234C of Rs. 27,533/- which is wrong and contrary to the facts and circumstances of the case, provisions of the Act and the Rules made thereunder.”

2. Briefly stated, common facts necessary for adjudication of the issues at hand in all the aforesaid appeals are: Assessee being a co-operative society, filed the returns of income for the Assessment Years under consideration declaring total income at Rs. 46,600/-, Nil, Nil, Nil & Nil, for the Assessment Years 2011-12, 2014-15, 2016-17, 2017,18 & 2020-21, respectively, which were processed under section 143(1) of the Income-tax Act, 1961 (in short, 'the Act'). Subsequently, on receiving information from the office of Joint DIT (I & CI), Unit-1, Mumbai, assessments were reopened by initiating the proceedings under section 147 / 148 of the Act. Assessing Officer, after declining the contention raised by the assessee, proceeded to disallow the claim of deduction of Rs.9,35,000/- (AY 2011-12), Rs.9,35,000/- (AY 2014-15), Rs.22,42,312/- (AY 2016-17), 18,18,106/- (AY 2017-18), Rs.17,57,650/- (AY 2020-21) under section 80P(2)(d) of the Income-tax Act, 1961 in respect of the interest income earned on investment in fixed deposit with co-operative bank, namely, SVC Co-operative Bank Ltd and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld.CIT(A) by filing appeals who has confirmed the disallowance made by the Assessing Officer by partly allowing the same. Feeling aggrieved, the assessee has come up in appeal before the Tribunal by way of filing present appeals.

4. Notices for appearance of the assessee society in these appeals were sent which were duly served, but none appeared on behalf of them. Consequently, the Bench decided to dispose of these appeals on the basis of material available on file with the assistance of the Ld. Departmental Representative for the Revenue.

5. It is brought on record that aforesaid appeals filed by the assessee are late filing from 2 days to 10 days and for condonation of the delay, assessee moved an application stating therein that due to unavoidable circumstances and on account of collecting by-laws and registration certificate from the SVC Bank Ltd, appeals could not be filed in time and stated that the delay is neither intentional nor mala fide. Keeping in view the settled principles of law laid down by Hon'ble Supreme Court in the case of Collector Land Acquisition, vs Mst. Katiji & Ors on 19 February, 1987 1987 AIR 1353 to advance the cause of justice, delay of 2 to 10 days in filing the appeals before the Tribunal is hereby condoned as assessee society being not having regular tax adviser and some unavoidable circumstance which is a sufficient cause.

6. We have heard the Ld. DR for the Revenue, perused the documents available on record, in the light of the settled principles of law.

6A. From the grounds of appeal raised by the assessee, assessment orders and impugned orders passed by the Ld. CIT(A), the sole question arises for determination in this case is

“As to whether Assessee Society is entitled for deduction qua the interest income received from parking its surplus funds with Co-operative Bank under section 80P(2)(d) of the I.T. Act, 1961?”.

7. Assessing Officer as well as Ld.CIT(A) have denied the deduction claimed by the assessee under section 80P(2)(d) of the Act qua its interest income from investment made in fixed deposit with SVC Co-operative Bank Ltd under section 80P(2)(d) of the Act on the ground that since SVC Co-operative Bank Ltd is no more a co-operative society as it has more than 105 branches in 7 states operating on the basis of licence issued by Reserve Bank of India and the interest income earned by assessee is clearly in the nature of “Income from other sources” it does not qualify for deduction under section 80P(2)(d) of the Act.

7. This issue has been considered and decided in favour of the assessee by the co-ordinate bench of Tribunal in M/s Petit Towers Co-operative Housing Society Ltd vs ITO (ITA No.549/Mum/2021) by returning findings as under:-

'8. We have given a thoughtful consideration to the contentions advanced by the Id. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the Id. A.R, and rightly so, the issue that interest received by a co-operative society on its deposits with co-operative banks would be eligible for deduction u/s 80P(2)(d) of the Act is covered in assessee's favour by orders of the various coordinate benches of the Tribunal in the following cases :

- (i). M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No. 3155/Mum/2019, dated 29.11.2019*
- (ii). Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.)*

- (iii). *M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai*
(ITA No. 1343/Mum/2017, dated 31.03.2017.
- (iv). *Marvwanjee Coma Park Cooperative Housing Society Ltd. Vs. ITO-Range 20(2)(2), Mumbai* (ITA NO. 6139/Mum/2014, dated 27.09.2017.
- (v). *Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai.*

In the aforesaid orders, it has been held by the Tribunal that though the cooperative banks pursuant to the insertion of sub-section (4) to Sec. SOP of the Act would no more be entitled for claim of deduction u/s SOP of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank would be entitled for claim of deduction u/s 80P(2)(d) of the Act. We find that the aforesaid issue had exhaustively been looked into by the ITAT, „G" bench, Mumbai in the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, wherein the Tribunal had observed as under:

"6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order, or not. In our considered view, the issue involved in the present appeal revolves around the adjudication of the scope and gamut of sub-section (4) of Sec. SOP as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. SOP, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not co-operative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr. CIT. Before proceeding any further, we may herein reproduce the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us. "80P(2)(d) (1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in subsection (2), in computing the total income of the assessee. (2). The sums referred to in sub-section (1) shall be the following, namely

- (a).....
(b).....
(c).....

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;"

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) of Sec. SOP, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. SOP would no more be applicable" in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „cooperative society" had been defined under Sec. 2(19) of the Act, as under:-

"(19) "Co-operative society" means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;"

We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. SOP would no more be entitled for claim of deduction under Sec, SOP of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative would be entitled for claim of deduction under Sec-80P(2)(d) of the Act.

8. We shall now advert to the judicial pronouncements that have been relied upon by the Id. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

- (i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)*
- (ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017)*
- (Hi) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.*
- (iv). Kaliandas Udyog Bhavan Pemlses Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai.*

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon"ble High Court of Gujarat in the case of State Bank Of India Vs CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under

section 80P(4)) of the Act. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITJD (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the same being distinguishable on facts had wrongly been relied upon by him. The adjudication by the 'Hon'ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments/deposits parked with a co-operative bank. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find; that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Honble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. We find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid Judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act."

8. We have perused the findings returned by co-ordinate bench of Tribunal in case of Petit Towers Co-operative Housing Society Ltd (supra), which is on identical issue, co-ordinate bench of Tribunal by distinguishing the case laws rendered by Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd vs ITO (2010) 322 ITR 283(SC) and by following the decision rendered by Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Honble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), reached the conclusion that interest income earned by co-operative society on its investment held with

co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.

8A. It is also discussed in the order that as per judgement rendered by Hon'ble Bombay High Court in the case of K. Subramanian and Anr. Vs Siemens India Ltd and Anr (1985) 156 ITR 11 (Bom) where there is a conflict between decisions of non jurisdictional High Courts, then a view favourable to the assessee is to be preferred as against that taken against him.

9. In view of what has been discussed above and following the order passed by co-ordinate bench of Tribunal in M/s Petit Towers Co-operative Housing Society Ltd vs ITO (supra), passed by following the decisions rendered by Hon'ble High Court of Karnataka in case of Pr. Commissioner of Income Tax and Anr. vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and decision rendered by Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), interest income earned by assessee society from parking its surplus funds with SVC Co-operative Bank Ltd would be eligible for claim of deduction under section 80P(2)(d) of the Act as the co-operative bank also falls in the category of society registered under the Co-operative Society Act, 1912 (20/1952) or under any other law for the time being in force in any state for the registration of co-operative society.

9A. Hence, the impugned orders passed by the Ld. CIT(A) in case of Assessee Society for Assessment Years 2011-12, 2014-15, 2016-17, 2017-18 & 2020-21 are hereby set aside and Assessing Officer is

directed to grant deductions claimed by the assessee under section 80P(2)(d) subject to verification of facts otherwise pleaded during the assessment proceedings. Resultantly, aforesaid appeals filed by the assessee are allowed.

Order pronounced in the open court on 01st November, 2022.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dt : 01st November, 2022

Pavanoan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR,SMC Bench
6. Guard File

(True copy)

By order

Dy.Registrar / Asstt.Registrar
ITAT, Mumbai Benches